



# California Fair Political Practices Commission

September 15, 1988

Honorable Judy McCarty  
San Diego City Council  
City Administration Building  
202 C Street  
San Diego, CA 92101

Re: Your Request for Advice  
Our File No I-88-320

Dear Ms. McCarty:

You have requested advice under the campaign disclosure provisions of the Political Reform Act.<sup>1/</sup>

## FACTS

You are a member of an informal organization, Community Alliance for Road Safety (CARS), which solicits and spends money for the purpose of promoting road improvement and road safety in the San Diego area. As a rule, CARS does not support or oppose candidates or ballot measures. However, in 1987 CARS registered as a campaign committee because it was making expenditures to support a San Diego County ballot measure. The committee was terminated in May 1988, and has not made expenditures since that time. CARS will never make expenditures to support or oppose candidates, and does not anticipate making expenditures to support or oppose ballot measures in the future.

## QUESTIONS

You have asked a series of questions which, in summary, involve the issue of whether donations received and spent by CARS are considered to be "contributions" and "expenditures" under the Act, and whether CARS is a controlled committee, because of your status as a city councilmember and your involvement in the activities of CARS.

---

<sup>1/</sup>Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Honorable Judy McCarty  
September 15, 1988  
Page Two

You have also asked whether the people who make donations to CARS are subject to the campaign contribution limitations of Proposition 73.<sup>2/</sup>

#### CONCLUSION

Depending on your involvement in the activities of CARS, the money received and spent by CARS may be "contributions" and "expenditures," which would require that CARS register as a recipient committee. If the money received and spent by CARS is deemed to be for political purposes, CARS must register as a recipient committee. As a general rule, the money will be deemed to be for political purposes if payments to the fund are received by you, controlled by you, or made at your direction, unless it is clear from the surrounding circumstances that the payments are for personal purposes unrelated to your candidacy or status as an officeholder.

#### ANALYSIS

In your letter you indicated that, in the past, you and the other members of CARS assumed that the group's activities would not be subject to the campaign reporting provisions of the Act, unless the organization supported candidates, elected officials or ballot measures. This is generally true. However, it does not always apply to situations where a candidate or elected officer is involved in the organization's activities. According to Commission regulations, donations to a fund will be considered contributions if the donations are made for political purposes, or if the donations are used by the fund to make payments which are either contributions or political expenditures under the Act. (Regulations 18215 and 18225; Watson Advice Letter, No. A-83-158, enclosed.)

Regulation 18215 provides that a payment is a "contribution" if it is received by or made at the behest of:

A candidate, unless it is clear from the surrounding circumstances that the payment was received or made at his or her behest for personal purposes unrelated to his or her candidacy or status as an office holder....

---

<sup>2/</sup> Proposition 73 was passed by the voters in the June 7, 1988 state election. The campaign contribution limitations of Proposition 73 go into effect on January 1, 1989.

Honorable Judy McCarty  
September 15, 1988  
Page Three

"Made at the behest" means a payment made under the control or at the direction of a candidate....

(Regulation 18215(a)(2) and (b).)

(For purposes of the Act's provisions, the term "candidate" includes elected officers.)

The definition of an expenditure is similar to that of a contribution, and includes a payment made by:

A candidate unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an officeholder....

(Regulation 18225(a)(2)(A).)

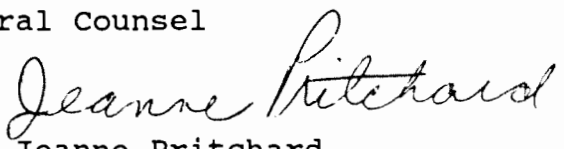
We are unable to give you a definitive answer concerning whether the payments received by CARS are "contributions" and "expenditures," and whether your involvement with the organization's activities makes CARS a committee controlled by you. Please review the Watson advice letter, which provides guidance as to when an organization becomes a controlled committee.

Some factors you may wish to consider in determining whether CARS is a controlled committee are: Do CARS's stationery, advertisements or solicitations include your name on them? Do you solicit donations for the fund? Do you control or direct payments from the fund? Do you receive payments from the fund? If the answer to any of these questions is in the affirmative, then it is likely that CARS is a committee controlled by you.

I hope this letter is helpful. Please contact me if you have any additional questions, or if you would like to discuss this letter.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Jeanne Pritchard  
Division Chief  
Technical Assistance and  
and Analysis Division



THE CITY OF  
**SAN DIEGO**

JUDY McCARTY  
COUNCILMEMBER  
SEVENTH DISTRICT

August 12, 1988

Ms. Diane Griffiths  
General Counsel  
Fair Political Practices Commission  
428 J Street - Suite 800  
Sacramento CA 95814

Dear Ms. Griffiths:

This is a request for an opinion on the applicability of the Political Reform Act, as amended, to the activities of the Community Alliance For Road Safety (CARS) which I chair.

Before I address CARS specifically, however, let me state that generally I, and others associated with CARS, have always assumed that if one acted in support of a candidate, elected official, or ballot measure, then one is subjected to the Political Reform Act and is required to file the appropriate reports. On the other hand, if one does not act on behalf of a candidate, elected official, or ballot measure, then one is not covered by the Act and its reporting requirements. We have acted on this belief. The passage of Prop. 73 and the wording used in several sections, however, raise some questions which we feel need to be answered before we can feel completely comfortable that we are obeying both the letter and spirit of the law.

The factual situation regarding CARS is this:

I, along with several citizens located primarily in the City of San Diego, formed CARS in 1986 in order to organize citizen support for State Route 52 and Jackson Drive (a local street in San Diego which we believe is needed to relieve traffic congestion). Several other elected officials also participated in CARS. CARS is an informal organization without written by-laws and is not incorporated. There are no paid positions. We organized meetings, published materials, caused letters to be

written to elected officials, circulated petitions, produced lapel pins, and produced a video tape. Needless to say we raised money for these purposes. I should also mention that it was believed at this time that there might be a ballot measure at some point seeking funding for transportation purposes. We expected that CARS might take a position on this measure, if and when it was placed on the ballot, but this was not the purpose for forming the CARS organization.

We established an account with Miller, Roos & Co., a widely known local accounting firm which also handles political campaigns. We asked if we needed to file as a political committee and were told that we needed to file only if we supported or opposed candidates or ballot measures, and even though we might do so in the future, there was no need to file until such time as we raised or spent money on supporting a measure. Mr. Miller received that advice from the FPPC. (This advice was also given to our current treasurer, Ms. Lori Anderson, when we reactivated CARS.)

In 1987, subsequent to the forming of CARS, the San Diego Association of Governments (SANDAG) placed a measure on the ballot to raise the sales tax for transportation purposes in San Diego County. CARS supported the measure and made independent expenditures in support of the ballot measure.

At that time a Committee statement was filed with the FPPC #871446. A final statement (Form 420) and termination report (Form 415) was filed on May 18, 1988.

Since the 1987 election, CARS members have become increasingly aware that an on-going effort will still be needed to get the roads and freeways we need. Therefore, we have reactivated CARS and established a bank account with Great American Savings Bank. There is no intention to support or oppose any candidates or ballot measures. In any event, CARS would never support candidates. CARS might support a ballot measure dealing with transportation issues, but one is unlikely in the foreseeable future.

I, and other members of CARS, will be soliciting funds from persons and groups -- including corporations -- in order to print materials, contact elected and appointed officials at all levels of government, send material to interested persons, and conduct other activities in support of streets, roads, freeways, and other transportation modes in order to relieve congestion and make roads safe. Our motto is, after all, "A Road Network That Works". Our specific focus will be the completion of Jackson Drive and of Route 52 from its current terminus at Santo Road in the community of Tierrasanta to the City of Santee. This was the focus of our

original effort and why we worked for the passage of Prop. A, the Transportation Sales Tax measure.

With this as background, I have the following questions:

1. Does CARS have any reporting obligations under the Political reform Act of 1974, as amended? (We know the answer is yes if we support or oppose a candidate or ballot measure. We are interested in situations other than those.)

2. Relating specifically to Prop. 73, and particularly new Section 85301 which says:

(a) No person shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution or loan which would cause the total amount contributed or loaned by that person to that candidate, including contributions or loans to all committees controlled by the candidate, to exceed one thousand dollars (\$1,000) in any fiscal year. (emphasis added) (the underlined language is also used other sections such as 85303 and 85304)

Since this Proposition refers to campaign contributions and seeks to control campaign contributions, it would seem that "all committees" refer to campaign and political committees. CARS is an organization to lobby for transportation issues rather than a committee organized for political purposes. Nonetheless, in the sense that I am chairperson, a founder, and certainly have substantial control over expenditures, it is controlled by me in the plain sense of the word "controlled". My concern is not whether it is a committee in the political sense but rather that it is controlled by an elected official who will probably be an active candidate for reelection.

Questions:

a. Does the fact that I am currently an elected official have any impact on CARS activities, reporting requirements (if any), and contributors?

b. Once I positively declare my candidacy for reelection, as required under section 85200, will this affect CARS and CARS contributors?

c. Specifically, do the contribution limitations in Prop. 73 apply to contributions to CARS? CARS does not, and will not ever, contribute money to a candidate or campaign. It will never support or oppose a candidate for office. It will probably not support or oppose another ballot measure.

d. Is there any way a citizen group or group dealing with specific issues becomes a recipient committee simply through my involvement other than as a candidate? Needless to say, I want to

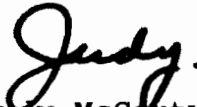
Ms. Diane Griffiths  
August 12, 1988  
Page 4

---

insure that my participation does not cause either embarrassment or needless burden to a group.

Ms. Griffiths, I appreciate your help in these matters. I want to insure that I and CARS operate fully within the law and do not want to inadvertently violate any laws of which we are unaware. Should you need any clarification on any of these points, or need more information, please contact me at (619) 236-6677 or my Executive Assistant, John Kern, at the same number. In addition, our treasurer, Lori Anderson, can be reached at (619) 484-6734.

Sincerely,



Judy McCarty  
Councilmember  
Seventh District

JM/jk



THE CITY OF  
**SAN DIEGO**

JUDY McCARTY  
COUNCILMEMBER  
SEVENTH DISTRICT

Aug 15 1 23 PM '88

August 12, 1988

Ms. Diane Griffiths  
General Counsel  
Fair Political Practices Commission  
428 J Street - Suite 800  
Sacramento CA 95814

Dear Ms. Griffiths:

This is a request for an opinion on the applicability of the Political Reform Act, as amended, to the activities of the Community Alliance For Road Safety (CARS) which I chair.

Before I address CARS specifically, however, let me state that generally I, and others associated with CARS, have always assumed that if one acted in support of a candidate, elected official, or ballot measure, then one is subjected to the Political Reform Act and is required to file the appropriate reports. On the other hand, if one does not act on behalf of a candidate, elected official, or ballot measure, then one is not covered by the Act and its reporting requirements. We have acted on this belief. The passage of Prop. 73 and the wording used in several sections, however, raise some questions which we feel need to be answered before we can feel completely comfortable that we are obeying both the letter and spirit of the law.

The factual situation regarding CARS is this:

I, along with several citizens located primarily in the City of San Diego, formed CARS in 1986 in order to organize citizen support for State Route 52 and Jackson Drive (a local street in San Diego which we believe is needed to relieve traffic congestion). Several other elected officials also participated in CARS. CARS is an informal organization without written by-laws and is not incorporated. There are no paid positions. We organized meetings, published materials, caused letters to be



written to elected officials, circulated petitions, produced lapel pins, and produced a video tape. Needless to say we raised money for these purposes. I should also mention that it was believed at this time that there might be a ballot measure at some point seeking funding for transportation purposes. We expected that CARS might take a position on this measure, if and when it was place on the ballot, but this was not the purpose for forming the CARS organization.

We established an account with Miller, Roos & Co., a widely known local accounting firm which also handles political campaigns. We asked if we needed to file as a political committee and were told that we needed to file only if we supported or opposed candidates or ballot measures, and even though we might do so in the future, there was no need to file until such time as we raised or spent money on supporting a measure. Mr. Miller received that advice from the FPPC. (This advice was also given to our current treasurer, Ms. Lori Anderson, when we reactivated CARS.)

In 1987, subsequent to the forming of CARS, the San Diego Association of Governments (SANDAG) placed a measure on the ballot to raise the sales tax for transportation purposes in San Diego County. CARS supported the measure and made independent expenditures in support of the ballot measure.

At that time a Committee statement was filed with the FPPC #871446. A final statement (Form 420) and termination report (Form 415) was filed on May 18, 1988.

Since the 1987 election, CARS members have become increasingly aware that an on-going effort will still be needed to get the roads and freeways we need. Therefore, we have reactivated CARS and established a bank account with Great American Savings Bank. There is no intention to support or oppose any candidates or ballot measures. In any event, CARS would never support candidates. CARS might support a ballot measure dealing with transportation issues, but one is unlikely in the foreseeable future.

I, and other members of CARS, will be soliciting funds from persons and groups -- including corporations -- in order to print materials, contact elected and appointed officials at all levels of government, send material to interested persons, and conduct other activities in support of streets, roads, freeways, and other transportation modes in order to relieve congestion and make roads safe. Our motto is, after all, "A Road Network That Works". Our specific focus will be the completion of Jackson Drive and of Route 52 from its current terminus at Santo Road in the community of Tierrasanta to the City of Santee. This was the focus of our

original effort and why we worked for the passage of Prop. A, the Transportation Sales Tax measure.

With this as background, I have the following questions:

1. Does CARS have any reporting obligations under the Political reform Act of 1974, as amended? (We know the answer is yes if we support or oppose a candidate or ballot measure. We are interested in situations other than those.)

2. Relating specifically to Prop. 73, and particularly new Section 85301 which says:

(a) No person shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution or loan which would cause the total amount contributed or loaned by that person to that candidate, including contributions or loans to all committees controlled by the candidate, to exceed one thousand dollars (\$1,000) in any fiscal year. (emphasis added) (the underlined language is also used other sections such as 85303 and 85304)

Since this Proposition refers to campaign contributions and seeks to control campaign contributions, it would seem that "all committees" refer to campaign and political committees. CARS is an organization to lobby for transportation issues rather than a committee organized for political purposes. Nonetheless, in the sense that I am chairperson, a founder, and certainly have substantial control over expenditures, it is controlled by me in the plain sense of the word "controlled". My concern is not whether it is a committee in the political sense but rather that it is controlled by an elected official who will probably be an active candidate for reelection.

Questions:

a. Does the fact that I am currently an elected official have any impact on CARS activities, reporting requirements (if any), and contributors?

b. Once I positively declare my candidacy for reelection, as required under section 85200, will this affect CARS and CARS contributors?

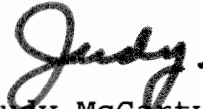
c. Specifically, do the contribution limitations in Prop. 73 apply to contributions to CARS? CARS does not, and will not ever, contribute money to a candidate or campaign. It will never support or oppose a candidate for office. It will probably not support or oppose another ballot measure.

d. Is there any way a citizen group or group dealing with specific issues becomes a recipient committee simply through my involvement other than as a candidate? Needless to say, I want to

insure that my participation does not cause either embarrassment or needless burden to a group.

Ms. Griffiths, I appreciate your help in these matters. I want to insure that I and CARS operate fully within the law and do not want to inadvertently violate any laws of which we are unaware. Should you need any clarification on any of these points, or need more information, please contact me at (619) 236-6677 or my Executive Assistant, John Kern, at the same number. In addition, our treasurer, Lori Anderson, can be reached at (619) 484-6734.

Sincerely,

A handwritten signature in cursive script that reads "Judy." with a period at the end.

Judy McCarty  
Councilmember  
Seventh District

JM/jk